

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN DOE 1, JOHN DOE 2, JANE
DOE 1, JANE DOE 2, JANE DOE 3,
and all persons similarly situated,

Plaintiffs,

v.

WASHINGTON STATE
DEPARTMENT OF CORRECTIONS,
and STEPHEN SINCLAIR, Secretary
of the Department of Corrections, in
his official capacity,

Defendants.

NO: 4:21-CV-5059-TOR

ORDER DIRECTING
IMPLEMENTATION OF PROPOSED
CLASS NOTICE

BEFORE THE COURT is Plaintiffs' Proposal of Notice to Class Members (ECF No. 73). This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein, the completed briefing, and is fully informed. For the reasons discussed below, Plaintiffs' Proposal of Notice to Class Members (ECF No. 73) is **GRANTED**.

BACKGROUND

On May 17, 2021, the Court granted Plaintiffs' Motion for Provisional Class Certification and directed Plaintiffs to serve and file a proposed "Notice" to members of the certified class and subclasses and suggest a method by which the notice should be accomplished and at whose expense. ECF No. 69. Plaintiffs submitted the proposed class notice on June 1, 2021. ECF No. 73. Defendants filed a response on June 8, 2021. ECF No. 74.

DISCUSSION

Notice to class members following class action certification is governed by Federal Rule of Civil Procedure 23(c)(2). For classes certified pursuant to Rule 23(b)(2), "the court may direct appropriate notice to the class." Fed R. Civ. P. 23(c)(2)(A). Class actions seeking injunctive relief that are certified under Rule 23(b)(2) are mandatory classes, meaning the injunctive relief necessarily affects the class as a whole. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361–62 (2011). Members of these types of classes are not provided an opportunity to be heard or permitted to opt out. *Id.* Therefore, notice requirements are permissive.

Here, Plaintiffs argue notice is unnecessary as there is no opt-out right and the class members' identities are known or readily ascertained from Defendant DOC's records. ECF No. 73 at 2. Alternatively, if the Court determines notice is appropriate, Plaintiffs propose notice via publication by posting a flyer in all DOC

1 facilities and DOC community supervision offices as well as posting the flyer to
2 the website established by Class Counsel for this matter. *Id.* at 3. Plaintiffs object
3 to individualized notice due to the unique circumstances of the case. *Id.*
4 Additionally, Plaintiffs request Defendants bear the cost of the postings in DOC
5 facilities and community supervision offices. *Id.* Defendants respond that DOC
6 does not have all the identifying information related to the identities of previously
7 incarcerated individuals; therefore, notice via publication in some other form
8 beyond the postings in the prisons would be necessary for the proposed subclass.
9 ECF No. 74 at 2. Defendants did not respond to Plaintiffs' request regarding costs.

10 Having reviewed the proposed notice flyer (ECF No. 73-1) and website
11 created by Class Counsel, which is listed on the flyer, the Court finds Plaintiffs'
12 proposed notice by publication addresses both parties' concerns. The proposed
13 form of notice is not individualized, thereby protecting the identities of the class
14 members, and publication to the established website, as well as printed flyers
15 posted within DOC facilities and community supervision offices, will reach all
16 class and subclass members. Defendants shall bear the costs associated with
17 printing and posting the flyer (ECF No. 73-1) in all Washington DOC facilities and
18 community supervision offices.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 2 1. Class counsel are directed to publish the proposed notice flyer (ECF No.
3 73-1) to the website dedicated to this matter **within 30 days of the date**
4 **of this order.**
- 5 2. Defendants are directed to post the proposed notice flyer in all
6 Washington DOC facilities and community supervision offices **within 45**
7 **days of the date of this order.** Defendants shall bear the costs
8 associated with printing and posting the flyers.
- 9 3. Defendants are further directed to post the proposed notice flyers in areas
10 of DOC facilities and community supervision offices that are easily
11 accessed by members of the class and subclasses. Defendants shall
12 ensure the flyers are easily seen and remain visible and legible during the
13 pendency of this litigation.

14 The District Court Executive is directed to enter this Order and provide
15 copies to counsel.

16 **DATED** June 30, 2021.



Thomas O. Rice
THOMAS O. RICE
United States District Judge